

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4766 OF 2004

Office Notes, Office Court's or Judge's orders
Memoranda of Coram,
appearances, Court's orders
or directions and
Registrar's orders.

Shri Milind Vasudeo with Archit
Jaykar and Milind Deshmukh i/by
M/s.Khaitan & Jayakar for the
petitioners.

Shri Namesh Dutt with P.Sharma
for Union of India.

Shri V.V.Tuljapurkar i/by Anil
Menon for Respondent No.4.

Coram : R.S.Mohite, J

Date : 6.12.2005.

PC

1. This petition impugns a
Judgment and order dated
19.6.2003 passed by the
Appellate Authority for
Industrial & Financial
Reconstruction, confirming an
order passed by the Board for
Industrial and Financial
Reconstruction on 5.2.2002. By

the order dated 5.2.2002 which was communicated to the petitioners by the BIFR vide a fax telegram the BIFR inter alia rejected the claim of interest made by the petitioners. The petitioners had earlier filed a winding up petition being Company Petition No.440/98. In an appeal arising from the Company petition, consent terms were filed before the Division Bench of this Court. Under these consent terms, the present respondent no.4 agreed that they owed to the petitioners sum of Rs.26,49,000/-. The petitioners however, agreed to accept sum of Rs.25 lakhs in full and final settlement of all claims against the present respondent no.4. The consent terms provided a schedule of payment. Rs.2,00,000/- was paid under the schedule but there was a default in respect of the balance amount. The consent terms did not expressly provide that in

the event of default, the entire amount of Rs.26,49,000/- would become due and payable. By the impugned order of the BIFR the claim of interest of the petitioners was not granted. It is seen from the impugned order that the petitioners did not apply before the two authorities for permission to file a suit for recovery of interest amount. The question as to whether interest was recoverable under the consent terms is a question relating to the interpretation of the said consent terms because there is no express provision for payment of interest in the event of default. I am informed that in May-2005 the Company petition was also dismissed for default. Advocate for the petitioners states that liberty may be given to him to file a suit. In my view, the impugned order can be confirmed and the petition can be disposed of by giving liberty

to the petitioners to file a suit for recovery of interest. Subject to these directions and subject to the leave granted to the petitioners, petition is disposed off.

(R.S.Mohite, J)